UNITED
NATIONS

E

Economic and Social
Council

Distr.
GENERAL

E/CN.4/1994/SR.32
25 February 1994

Original: ENGLISH

COMMISSION ON HUMAN RIGHTS

Fiftieth session

SUMMARY RECORD OF THE 32nd MEETING

Held at the Palais des Nations, Geneva,
on Monday, 21 February 1994, at 10 a.m.

Chairman: Mr. van WULFFTEN PALTHE (Netherlands)
later: Mr. URRUTIA (Peru)

CONTENTS

Question of the human rights of all persons subjected to any form of detention or imprisonment, in particular:

(a) Torture and other cruel, inhuman or degrading treatment or punishment

(b) Status of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment

(c) Question of enforced or involuntary disappearances

(d) Question of a draft optional protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (continued)

This record is subject to correction.

Corrections should be submitted in one of the working languages. They should be set forth in a memorandum and also incorporated in a copy of the record. They should be sent within one week of the date of this document to the Official Records Editing Section, room E.4108, Palais des Nations, Geneva.

Any corrections to the records of the public meetings of the Commission at this session will be consolidated in a single corrigendum, to be issued shortly after the end of the session.

GE.94-11220 (E)

The meeting was called to order at 10.20 a.m.

QUESTION OF THE HUMAN RIGHTS OF ALL PERSONS SUBJECTED TO ANY FORM OF DETENTION OR IMPRISONMENT, IN PARTICULAR:

(a) TORTURE AND OTHER CRUEL, INHUMAN OR DEGRADING TREATMENT OR PUNISHMENT

(b) STATUS OF THE CONVENTION AGAINST TORTURE AND OTHER CRUEL, INHUMAN OR DEGRADING TREATMENT OR PUNISHMENT

(c) QUESTION OF ENFORCED OR INVOLUNTARY DISAPPEARANCES

(d) QUESTION OF A DRAFT OPTIONAL PROTOCOL TO THE CONVENTION AGAINST TORTURE AND OTHER CRUEL, INHUMAN OR DEGRADING TREATMENT OR PUNISHMENT

(agenda item 10) (continued) (E/CN.4/1994/24, 25 and Add.1, 26 and Corr.1 and Add.1, 27, 28, 29 and Add.1, 30-33, 88 and Corr.1, 93 and Corr.1 and 103; E/CN.4/1994/NGO/5, 8, 10, 11, 18, 19, 21 and 25; E/CN.4/Sub.2/1993/8, 9, 23/Rev.1, 24 and Add.1 and 2, and 25; E/CN.4/Sub.2/1992/10; A/48/520)

Statements in exercise of the right of reply

1. Mr. CURBELO (Cuba) said that in its statement to the Commission, the non-governmental organization Reporters without Borders - International had said that there was only one voice in Cuba, that of the Cuban Communist Party. The naïvety or ignorance of that statement had surprised him since the revolutionary people of Cuba had a multitude of voices and opinions. Nevertheless, if there was a common objective in Cuba, it was to keep the people united and, above all, to prevent any outsiders, such as that NGO, from interfering with the country's destiny, a right reserved for the Cuban people.

2. The NGO in question undoubtedly knew nothing about the real situation in his country, in particular about the many voices that were currently participating in the elaboration of its policies. Only recently, through the parlamentos obreros, the Cuban people had been given its full voice in political and economic decisions.

3. To assert that Cuba had only one voice was to commit an error common in the countries of the North, namely, to see the mote in someone else's eye and not the beam in one's own. As for the alleged journalists, the representative of the NGO in question seemed to be confusing the word "journalist" with "terrorist", which described those to whom she had referred.

4. Mr. KAKAKHEL (Pakistan) said that he wished to comment on the statement by the representative of India at the 29th meeting of the Commission with regard to the earlier statement by the Secretary-General of the Organization of the Islamic Conference (OIC), of which Pakistan was currently the chairman.

5. The Secretary-General of OIC had expressed concern at the massive violations of human rights in Kashmir and had declared the Organization's solidarity with the struggle of the people of Jammu and Kashmir for self-determination. In so doing, he had faithfully reflected the position adopted unanimously by the OIC member States on the Jammu and Kashmir issue.

6. The twenty-first Islamic Conference of Foreign Ministers, held at Karachi in April 1993, had expressed concern at the alarming increase in the use of force against and massive violations of the human rights of the Kashmiri people and called upon the member States to persuade India to cease those violations and enable the Kashmiri people to exercise its inalienable right to self-determination, in accordance with the relevant Security Council resolutions.

7. The representative of India had tried to confuse the problem of Jammu and Kashmir by linking it with the problems of the Muslims of India. There was a fundamental distinction between the two groups: Indian Muslims were citizens of India and were entitled to the protection of the Indian legal system; the people of Jammu and Kashmir inhabited a disputed territory and were engaged in a struggle for self-determination.

8. Mr. MBURU (Kenya) said that certain allegations had been made against his Government by the representative of the Robert F. Kennedy Memorial Centre for Human Rights. In that connection, he wished to point out that, in exercising his own rights, every person must respect the competing rights of others in the community, regardless of his or her social standing. No Government could condone antisocial behaviour or utter disregard for the law of the land.

9. His Government had, in rare instances and always as a last resort, been forced to curb the activities of certain elements whose sole purpose had been to disrupt the peace in the name of their right to exercise their freedom of expression. It had, regrettably, been forced to seize certain publications the aim of which was to cause disaffection with the Government and to incite the public to violence.

10. In taking those steps, his Government had endeavoured to act strictly in accordance with the law. In particular, it had always acted in conformity with article 19 of the International Covenant on Civil and Political Rights, which set forth the conditions under which the right to freedom of expression might be subject to certain restrictions. It was, therefore, erroneous to impute sinister motives to his Government, as had been suggested by the representative of the NGO in question.

11. Mr. CHANDRA (India) said that the problem in Jammu and Kashmir arose from Pakistan's involvement in terrorist activities there. Although Pakistan denied its involvement, it had done so also in 1947 and in 1965 and had subsequently admitted the fact. In fact the Pakistani press openly published the names of individuals from Pakistan who had led terrorist actions in Kashmir, while members of Parliament had admitted that training camps existed.

12. Jammu and Kashmir constituted an integral part of India; all its nationals being Indian citizens. Jammu and Kashmir had its own constitution and had held eight elections; it had elected representatives to its own local legislative assembly and to the Indian national Parliament.

13. His Government was maintaining a remarkable openness with regard to the situation in Jammu and Kashmir, in accordance with its national policies. Any ambassador or diplomat accredited to New Delhi could visit Kashmir at any

time. Arrangements had been made for representatives of States members of the Commission on Human Rights to pay special visits to Jammu and Kashmir, and the International Committee of the Red Cross (ICRC) had also been invited to visit the territory.

14. Mr. MOTTAGHI-NEJAD (Islamic Republic of Iran) said that he wished to reply to the statement by the representative of a well-known terrorist organization, the People's Mojahedin-e Khalq Organization (PMKO), whose members attended the meetings of the Commission as members of the International Falcon Movement. The PMKO, which has its headquarters in Baghdad, received financial and military assistance from the Iraqi Government. The Board of Directors of the Falcon Movement was undoubtedly unaware that the Movement, a socialist organization, was being used as a front by groups involved in terrorist operations.

15. In his earlier reports, the Special Representative, Mr. Galindo-Pohl, had explicitly referred to the terrorist operations of PMKO and its effects on Iranian society, having interviewed some of the victims. Several international organizations had confirmed reports that PMKO had been directly involved in the suppression of the uprising of the Shiites in the south and the Kurds in the north of Iraq and collaborated closely with the Iraqi army. The nature of PMKO activities had also been reported by many other countries.

16. Mrs. MALUWA (Malawi) said that Article 19: the International Centre against Censorship had asserted that a "Nyan secret society in Malawi" was attempting to stop free discussion of issues and to disenfranchise opposition supporters by driving them from their homes, such actions being carried out with the tolerance and apparent complicity of the Government.

17. "Nyan" was not a secret society. It was the name of a traditional dance form dominant in, but not exclusive to, the Chewa tradition. Nyan traditional dance had not given rise to any of the alleged acts and posed no threat to the country's transition from a single to a multiparty system of government. Not one of the many newspapers in her country had reported anything that might substantiate the assertions of the NGO in question.

18. The question of violence and unruly behaviour during the period leading up to the forthcoming general elections was a matter of concern to all her compatriots. The National Consultative Council, consisting of members of the seven registered political parties, had established a special committee to investigate all matters relating to political violence and unruly behaviour. It had not, however, issued any statement concerning links between such behaviour and the Nyan traditional dance.

19. Mr. FERNANDEZ de CORDOBA (Ecuador) said that two non-governmental organizations (NGOs) had recently referred to 30 peasants being imprisoned in his country without proper legal formalities. In fact, the persons in question had been charged with the murder of 11 policemen and soldiers, who had been treacherously ambushed in December 1993 while patrolling the Putumayo River on the Columbian border. The legal proceedings were taking place with all the guarantees under Ecuadorian law for the accused, some of whom had confessed.

20. Mr. ERMACORA (Austria) said that all the thematic mechanisms established under agenda item 10 were important but that, since the link between personal liberty, on the one hand, and the fundamental human rights to life and personal integrity, on the other, was based not only on written texts but also on United Nations practice, his Government appealed to the Secretary-General to establish a comprehensive programme within the system of advisory services and technical assistance aimed at building and strengthening adequate national structures in the administration of justice and in the administration of prisons and detention centres. It endorsed the recommendation to the Commission in Sub-Commission resolution 1993/39 to create a monitoring mechanism to follow up the question of the independence and impartiality of the judiciary.

21. The World Conference on Human Rights had reaffirmed that torture was one of the most atrocious violations of human dignity and had urged States to put an immediate end to the practice, if necessary by strengthening existing mechanisms. However, less than half the Member States of the United Nations had become parties to the Convention against Torture and only a small minority had made the optional declaration recognizing the competence of the Committee against Torture to receive communications from State parties and from individuals. He urged the States that had not yet done so to ratify the Convention and to make the optional declaration. To that end, the Centre for Human Rights should increase its technical assistance so that universal ratification could be achieved.

22. One of the new elements introduced by the Convention against Torture was the confidential inquiry procedure set forth in its article 20. The Committee against Torture had recently concluded its first inquiry of that kind and had confirmed, in a public statement, the existence of systematic torture in Turkey. The inquiry procedure would, he hoped, be applied with the same objectivity to other alleged cases of systematic torture.

23. All the provisions of the Convention against Torture must be implemented at the domestic level. States parties should, in particular, ensure that all acts of torture were classified as offences under their criminal law and that the perpetrators of such crimes were punished by the appropriate penalties. In practice, only a very few law-enforcement officials had ever been punished for acts of torture and, in many countries, they enjoyed virtual impunity.

24. Another innovative element of the Convention against Torture, though rarely applied in practice, was the principle of universal jurisdiction. All officials should be made aware of their duty under the Convention to arrest, prosecute, sentence or extradite anybody present in the territory of their country who had allegedly committed an act of torture in any country in the world, regardless of the nationality of the perpetrator or the victim.

25. The reports of the Special Rapporteur on the question of torture were part of the efforts to prevent and eradicate the practice. It was, discouraging to note, however, that he had had to communicate allegations of torture, of varying degrees of severity, to no less than 60 Governments.

26. His delegation welcomed the Special Rapporteur's clarifications concerning the criteria for urgent appeals. It endorsed his view that human rights violations committed by non-State actors fell outside his mandate. Even in cases of armed conflict, the Special Rapporteur should be guided by the definition of torture contained in article 1 of the Convention, according to which torture could be inflicted only by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity. It also agreed with the Special Rapporteur's conclusion that the persistence of torture was a testimony to the failure of political will.

27. Turning to the report of the Working Group on Enforced or Involuntary Disappearances (E/CN.4/1994/26), he noted that, although the number of alleged cases of disappearances in 1993 was lower than in previous years, the huge number of unclarified cases was alarming. The situation in the former Yugoslavia was particularly serious and his delegation thus welcomed the Working Group's recommendation that a special procedure be established for tracing missing persons in the former Yugoslavia (para. 536). It also agreed with the Working Group that the adoption by the General Assembly in 1992 of the Declaration on the Protection of All Persons from Enforced Disappearance was the single most encouraging achievement in combating disappearance throughout the world (para. 532). To ensure proper application of the Declaration, the Commission on Human Rights should adopt the Working Group's recommendations (paras. 87 and 88) and entrust it with a monitoring task based on periodic country reports.

28. His delegation fully supported the appeal by the Working Group on Arbitrary Detention to all Governments which retained states of emergency to limit their use to cases warranted by the seriousness and emergency character of the situation (E/CN.4/1994/27, para. 72). It also agreed that habeas corpus was one of the most effective means to combat the practice of arbitrary detention and that it should be regarded as a personal right which could not be derogated from even in a state of emergency.

29. The Working Group had noted that 38 of the arbitrary detention cases on which decisions had been adopted, involving 147 persons, had been motivated by the lawful exercise of the right to freedom of expression (para. 37). The relationship between arbitrary detention and freedom of expression thus needed to be explored further and his delegation welcomed the first report of the Special Rapporteur on the promotion and protection of the right and freedom of opinion and expression (E/CN.4/1994/33).

30. His delegation had frequently expressed its conviction that abhorrent practices such as torture, summary executions and enforced disappearances could be eradicated only by effective preventive action. The European Committee for the Prevention of Torture had been highly successful in preventing such human rights violations by visiting places of detention in most of the member States of the Council of Europe.

31. That positive European experience had prompted the Government of Costa Rica to submit a draft text for an optional protocol to the United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. Welcome progress had been made on the

preparation of that optional protocol but, in view of the call of the World Conference on Human Rights for its early adoption, the process needed to be accelerated.

32. Mr. Urrutia (Peru) took the Chair.

33. Mr. ZUZUL (Observer for Croatia) said that, some two months previously, a group of women, girls and men had arrived in Geneva and had stood in front of the Palais des Nations where they had erected a wall of bricks, each containing the name of a loved one for whom they continued to search. The group had included an old woman whose four sons had disappeared in Vukovar. Although those persons were no longer in Geneva, owing to a lack of finance, he was certain that they had not lost hope. A much larger wall of bricks had been erected in front of UNPROFOR headquarters in Zagreb. The number of bricks there was countless and each one contained a name and reflected the three-year-old hope that the loved one was still alive. More than 2,000 people were missing since the occupation of Vukovar by the Yugoslav army.

34. His Government has done its utmost to help find the thousands of missing persons and, in 1992, it had approached the Working Group on Involuntary or Enforced Disappearances and had filed all the available data with the Secretariat. However, legal and administrative obstacles had begun to appear, since the case of missing persons in Croatia did not come within the terms of reference of the Working Group, with the result that, in 1993, the Commission had adopted resclution 1993/7 containing a paragraph which requested the Special Rapporteur on the former Yugoslavia to develop proposals for a mechanism to address the subject of disappearances in the former Yugoslavia.

35. A member of the Working Group had visited the former Yugoslavia, at the request of the Special Rapporteur, and had produced an excellent report which suggested a "special process" (E/CN.4/1994/26/Add.1, para. 23). The Government of Croatia fully supported that suggestion and hoped that the "special process" would become operational in the shortest possible time.

36. To that end it had prepared a text of a strictly humanitarian draft resolution designed solely to establish the "special process". It hoped that the Commission would wish to send a message to the people of Croatia that it was doing everything in its power to determine what had happened to the 7,600 missing persons in Croatia. Unfortunately, some powerful delegations preferred to deal with all questions pertaining to human rights violations in the former Yugoslavia in a single resolution.

37. His Government attached importance to the newly established Commission for Imprisoned and Missing Persons and hoped that all data would be made available from Belgrade and other places so that, one by one, all cases could be resolved.

38. Mr. ABOU EL DAHAB (Observer for Egypt) said that the international community had reached the conclusion that human rights were indivisible and interrelated and that, as had been pointed out by a number of speakers, human rights, development and democracy were closely linked. The dominant role in

that regard was played by the International Covenants on Human Rights and there was a unanimous commitment to implement the rights they contained and to ensure that they benefited all peoples.

39. His Government's participation in that commitment was revealed by the fact that it had acceded to 18 international human rights instruments and was sincerely implementing their provisions. Several of those international instruments condemned abhorrent practices which, even before its accession to the instruments in question, his Government had regarded as offences, the most serious of them being the crime of torture. In that connection, he welcomed the report of the Special Rapporteur on the question of torture (E/CN.4/1994/31). All aspects concerning that crime were covered by Egyptian legislation and the decisions of the Egyptian courts in cases involving torture testified to the fact.

40. His Government was endeavouring to protect democracy, freedom of expression and freedom of religion and belief and to ensure the safety of its citizens and foreigners against the threat of terrorism, which was the manifest duty of the State. However, action along those lines had always to be taken within the framework of the constitutional provisions. Non-governmental organizations had also an important role to play and there was a need for a constructive dialogue between NGOs and the Government.

41. Mr. HJELDE (Observer for Norway) said that his delegation welcomed the initial report by the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression (E/CN.4/1994/33). It agreed with the Special Rapporteur that his mandate implied a combined approach that considered the general situation as well as specific incidents and individual cases and supported the view that the object of conclusions and recommendations should be better protection of the right to freedom of opinion and expression and the elimination of violations of that right.

42. Like the Special Rapporteur, his delegation was deeply concerned at the numerous reports of discrimination, threats and acts of violence and harassment against information professionals, such as journalists, editors, writers, publishers and printers, some of them even being detained. It was therefore pleased to see that the report of the Working Group on Arbitrary Detention placed great emphasis on protection of the rights and freedoms of information professionals. Freedom of expression and freedom for the media and its professionals were indispensable to democracy and international understanding. It was a sad fact, however, that every day people were detained, harassed or even killed for holding opinions deemed unacceptable by Governments.

43. His own Government was still deeply concerned at the unacceptable death sentence that had been declared against the British writer Salman Rushdie and appealed once again to the Iranian Government to disassociate itself from those threats. Both the Fatwa and the offer of a monetary award constituted incitements to murder. The international community must condemn the fact that such a death sentence had been pronounced for the production of a literary work, the calls for its execution outside the territory of the country and the threats made against persons associated with the work. All Governments and the Commission must take a clear stand against such intolerable practices.

44. The effective promotion of the human rights of persons who exercised the right to freedom of opinion and expression was of fundamental importance for the safeguard of human dignity. It was such a fundamental right that it could not be restricted by traditions, religious considerations, or majority decisions. It was, however, not only a right but also a question of tolerance and respect for the individual, whether or not the views in question were popular.

45. Ms. BURER (Pax Christi International) said that it was generally recognized that persons arrested and detained (whether for criminal or for political offences) had rights. That was largely due to the work of the Commission, the Sub-Commission and numerous non-governmental organizations throughout the world. Nevertheless, there were still some countries, some of them members of the Commission, where Governments not only failed to protect the rights of detainees and prisoners but systematically abused those rights, often for the purpose of terrorizing the population and thereby preventing the emergence of an effective opposition. Self-preservation by oppressive and unpopular Governments was one of the major causes of the abuses with which the Commission had to deal.

46. The representatives of the People's Republic of China had, in their statements under agenda item 10, spoken of the rights and privileges of prisoners, including those held in so-called "labour-reform" camps. What many members of the Commission had thought were rigorous prisons and hard-labour camps, in which enormous numbers of prisoners suffered, were actually it appeared, special schools in which systematic and regular education on law, ethics and philosophy of life was provided, along with basic education and vocational training.

47. However, reports from Tibet contrasted starkly with those statements. Hundreds of Tibetans had been arrested in 1993 for peacefully expressing their opposition to Chinese rule there. Reports of torture and other cruel, inhuman and degrading treatment of prisoners continued to reach the outside world. During the previous week, for instance, newspapers had printed first-hand testimonies of four young Tibetan nuns, who had been imprisoned for taking part in peaceful demonstrations and for calling out "Long live the Dalai Lama" and "Free Tibet". According to their testimony, they had been repeatedly beaten during their detention and subjected to various other forms of cruel and degrading treatment and torture. Reports of that kind were far from exceptional: beatings, the use of electric shocks, hanging, exposure to extreme cold or heat, sexual abuse and other forms of cruel and degrading treatment were the rule rather than the exception.

48. The press had also revealed new and shocking information concerning the treatment of prisoners in East Timor. According to the newest reports, a number of persons wounded during the Dili massacre on 12 November 1991 had been taken to a military hospital where they had been killed by Indonesian soldiers. Her organization was deeply saddened by those reports and considered that they should be thoroughly investigated. It continued to be concerned about the imprisonment of Xanana Gusmao, the leader of the East Timorese people, and called on the Government of Indonesia to release him and other political prisoners, particularly those from East Timor, Acheh and West Papua.

49. An Amnesty International report on disappearances and political killings in Morocco confirmed the information received by her own and other human rights organizations concerning the fate of persons incarcerated by the Moroccan authorities in the occupied Western Sahara. In 1991, more than 300 missing persons had been released by the Moroccan authorities, an action which she welcomed. Her organization joined the call for the release of all the remaining Saharans classified as disappeared and requested the Commission to make specific reference to them in a resolution.

50. On the island of Bougainville, Papua New Guinea troops had murdered and tortured suspected opponents of the Government. Reports reaching her organization confirmed that those troops were still committing gross violations of human rights there while the forces of the Bougainville revolutionary army, fighting for the island's independence, had also committed serious human rights violations. That was a clear case where human rights violations and the suffering of the people would not end until peace was restored. Her organization urged the Commission, therefore, to request the Secretary-General to appoint without delay a special envoy to investigate the human rights in Bougainville and to work with the parties to seek a political solution.

51. Lastly, she wished to draw attention to the situation in Kosovo, where the Serbian authorities had stepped up the harassment and arrest of the ethnic Albanians; to the massacre of the Jumma people in the Chittagong Hill Tracts (in Bangladesh); to the new wave of violence in Burundi; to the grave situation of the Kurds in Turkey, and to the precarious situation of the Kurds, Turkomens, Shiites and Assyrians in Iraq.

52. Ms. GONZALEZ (Latin American Federation of Associations of Relatives of Disappeared Detainees) said that according to the reports of the Working Group on Enforced or Involuntary Disappearances (E/CN.4/1994/26 and Add.1) enforced disappearances had increased both in Latin America and the Caribbean and in the rest of the world. Her organization welcomed the achievements of the Working Group and hoped that it would be strengthened and provided with the necessary human and financial resources to carry out its work effectively, perhaps in the form of its own permanent secretariat.

53. The increase in enforced disappearances should be more widely publicized to the international community. It was regrettable that Governments appeared uninterested in disseminating and implementing the Declaration on the Protection of All Persons from Enforced Disappearance, despite the Commission's invitation to them at its previous session. While the Declaration was a first step towards the effective protection of persons from enforced disappearance, her organization requested the Commission to begin work on a convention to strengthen the international legal framework for such protection.

54. Her organization supported the broad criteria on reparations established by the Special Rapporteur in the final remarks and conclusions of his report (E/CN.4/Sub.2/1993/8, paras. 131-136). It asked the Commission to authorize its Sub-Commission to prepare a study that would lay the foundations for a Declaration on the question, using the Special Rapporteur's proposed basic principles and guidelines.

55. In Colombia none of the State bodies seemed prepared to enforce the provisions of the Declaration on the Protection of All Persons from Enforced Disappearance. The circumstances in which enforced disappearances occurred in Colombia encouraged impunity. A number of elements surrounding the 170 enforced disappearances that had occurred in 1992 should be scrutinized. Institutional responsibility could be avoided by using vehicles with false licence plates, detaining victims in clandestine or unofficial places, where they were subjected to torture and humiliation, or by concealing corpses among those who had "died in combat" in actual or alleged confrontations with armed groups.

56. The violence in Peru had led to at least 5,500 cases of enforced disappearances, security forces and paramilitary groups in Guatemala continued to commit grave human rights abuses, including enforced disappearances and the systematic inflictions of torture, and while there had been no enforced disappearances reported in El Salvador in 1993, responses were still pending on 2,638 cases uncovered by the Working Group and the Salvadorian Government still refused to allow the Working Group to visit the country. The Commission should monitor closely the situation of missing persons in those three countries.

57. In Western Sahara and East Timor, cases of enforced disappearance were often not reported to the Working Group essentially for the same reasons that they were not reported in Latin America: family members' fears, ignorance of legal procedure and the total lack of remedies in the Moroccan and Indonesian legal systems, respectively. Those two Governments, however, had not yet accounted for hundreds of cases reported in previous years. The Commission, in its recommendations, should press for visits by the Working Group to those countries.

58. Mr. CASTILLO (International Work Group for Indigenous Affairs) said he wished to speak about the detention of indigenous persons in the United States without due process, in particular the cases of Leonard Peltier and Eddie Hatcher. In the former case, overwhelming evidence had been provided of a secret, illegal campaign of terror and human rights violations that had led to the arrest, conviction and imprisonment of Peltier, but the Federal Government continued to withhold some 6,000 pages of documents that could help to prove his innocence. It appeared, as a result of a decision by the United States Parole Board in December 1993, that he would spend the rest of his life in prison. In the 18 years he had served thus far, he had been denied basic medical care and was, consequently, nearly blind. He had also been confined in the Marion Control Unit, where he had been administered psychotropic drugs as part of a "behaviour modification" programme.

59. Eddie Hatcher, a Tuscarora Indian, had been the first person tried under the 1984 Federal Anti-Terrorist Act. Having been acquitted by the jury in a trial where he had been denied the assistance of Counsel and the right to introduce witnesses and evidence, he had then been charged with kidnapping by the State of North Carolina in connection with the same incident. In September 1991, his lung had been punctured in a stabbing attack by another prisoner, who had later told the North Carolina State Bureau of Investigation and the press that prison officials had ordered him to commit the crime.

60. His organization was also concerned at the conditions in Pelican Bay Prison in California, where most of the prisoners were Mexicans, Native Americans and African Americans. The 14,000 prisoners in that facility spent 24 hours a day locked in their cells and were deprived of all contact with the outside world. They were not allowed to participate in communal activities or even to hang pictures of loved ones in their cells. They were totally dominated by the guards, who formed gangs to impose their own brand of punishment.

61. Ms. SHARFELDDIN (International Organization for the Elimination of All Forms of Racial Discrimination) said that Mr. Monsur Al-Kikhia, a member of her organization's Executive Council had disappeared more than 60 days previously. Her organization had appealed to non-governmental organizations (NGOs) to request the Egyptian authorities to account for his disappearance and make every effort to protect his life. It had also sent another letter with a similar request, signed by several NGOs, to the Secretary-General of the United Nations. The case was a particularly ominous one, since Mr. Al-Kikhia's abduction was due to his active role in defending human rights. She hoped that the United Nations would publicize the incident in the international media, assist the Egyptian authorities in their investigation and appeal for Mr. Al-Kikhia's safety.

62. Mr. SCHWARTZ (United States of America) said that freedom of speech and of the press had always been prized by his compatriots and were enshrined in the very first article of their Bill of Rights. Unable to accept the limitations imposed on that right by article 20 of the International Covenant on Civil and Political Rights, the United States had entered a reservation at the time it had ratified the Covenant. Apart from certain aberrations in specific historical circumstances, which were rapidly repudiated, freedom of expression had always been guaranteed in the United States. The protests staged during the war in Viet Nam were a fine example of that.

63. Freedom of expression was the cornerstone of all other fundamental rights. Democracy, development and respect for human rights, the triad enshrined in the Vienna Declaration and Programme of Action were unattainable without free expression. As paragraph 8 of the Vienna Declaration put it, democracy was based on the freely expressed will of the people. That included the right to change one's opinion and the right of opposing or minority views to be aired. Public debate and discussion had thus been at the heart of democracy since the Greek city-State.

64. The human person was the central subject of development, as stated in both the Declaration on the Right to Development and the Vienna Declaration. No one could develop his or her full potential without free expression, which was thus at the heart of individual development. The reluctance to speak out openly about the health problems and environmental deterioration brought on by ruthless industrialization, or official corruption and gross economic inefficiency in the former Soviet Union and the suppression of environmentalists in Bulgaria and Czechoslovakia, showed that it was essential for national development also.

65. The arguments that freedom of speech was a parochial Western value, part of the "individualistic ethos", or that it must be suppressed in the interest of growth and stability, should be seen for what they were - masks for repression. However, the suppression of information was counterproductive. He compared the cases of Botswana and Zimbabwe, democracies which had escaped famine in the early 1980s, to the famines in Ethiopia and the Sudan, where despotic Governments did not have to face re-election and had concealed the situation. Denial of free expression did not promote, but rather retarded, economic growth.

66. Freedom of expression was also the foundation of all other human rights, for violations - whether they were against minorities or women - must be exposed before they could be stopped. Every Government that feared democracy was indifferent to individual development and/or scorned human rights, while seeking to control public opinion and manipulate information and the media. For example, China continued to imprison many of those who spoke out against government policies; and few dared to speak against the Cuban Government.

67. The Special Rapporteur had, quite rightly, recognized the importance of independent, democratic and pluralist media and said that he would be seeking better protection of the right to freedom of opinion and expression and the elimination of violations of that right (E/CN.4/1994/33). His delegation also welcomed the Special Rapporteur's concern for the protection of journalists and professional writers and hoped that he would investigate laws or regulations that constituted violations of freedom of expression or access to information; interference with the freedom of movement of journalists; the suspension, banning or closure of newspapers and other publications; and arbitrary or discriminatory dismissal of employees of newspapers or broadcasting stations. It also hoped that he would closely monitor the threat or use of violence against journalists by government forces, drug traffickers or irregular armed groups.

68. The Special Rapporteur had been asked to pay particular attention devoted to integrating the rights of women into the human rights mechanisms of the United Nations. In that connection, his delegation requested the Special Rapporteur to consider, in particular, the problems of discrimination against women in the media and of ensuring that issues affecting women were not edited out by male indifference.

69. His delegation welcomed the consideration by the Working Group on Arbitrary Detention of communications from individuals who had been detained for exercising their right to freedom of expression. The Working Group's decisions on individual cases appropriately complemented the Special Rapporteur's more far-reaching efforts. The Working Group should pay particular attention to the arbitrary detention of individuals for long periods of time or under poor conditions; should seek compliance with previous Commission resolutions regarding visits by the Working Group; and should modify its methods of work so as to inform affected individuals of its decisions promptly rather than in its annual report to the Commission.

70. Mr. GARRETON (Chile) said that in his annual report (E/CN.4/Sub.2/1993/23/Rev.1), the Special Rapporteur on states of emergency had highlighted the fact that they were often declared in order to suppress

citizens' rights and strengthen the power of the State, usually the executive power. Every human rights instrument established certain conditions regulating the declaration of a state of emergency, namely, that an emergency must exist, (war or some other situation threatening the nation); that the state of emergency must be temporary and its beginning and ending dates specified; that certain inalienable rights could not be suspended during the state of emergency; that the suspension of rights must be proportionate to the emergency; and that the international community must be notified. In short, even under a state of emergency, the rule of law must prevail, a concept not easily accepted by would-be dictators.

71. The Special Rapporteur also noted with alarm cases of exceptional measures being adopted by domestic legislation without a state of emergency being officially proclaimed. Human rights were often violated by such exceptional - and irregular - measures.

72. In 1990, Mr. Louis Joinet had been appointed by the Sub-Commission as Special Rapporteur to prepare a report on the independence of the judiciary, particularly with regard to judges and lawyers. His final report was currently before the Commission (E/CN.4/Sub.2/1993/25). The discussion about the creation of national human rights institutes pointed up the failure of the judiciary to fulfil its responsibility to protect those rights. The independence of the judiciary was compromised by, inter alia, inadequate systems of appointment, often by the executive power; pressure by other public authorities; threats against judges who maintained their independence; replacement of independent judges by "military", "popular" or "revolutionary" courts subject to the rulers; and low salaries which led to corruption.

73. The independence of lawyers was also of paramount importance. Parties to a trial must be able to choose their Counsel freely, in the assurance that confidentiality and full professional competence would be available. However, many lawyers in various parts of the world were under pressure from dictators to refrain from defending cases of a political nature or were accused of being "accessories to terrorism" if they defended alleged terrorists.

74. His delegation likewise regretted that, in many countries, habeas corpus procedures did not exist, had been suspended, were not readily available or had not been used. It thus supported the Sub-Commission's efforts to prepare a declaration on habeas corpus with a view to the drafting of an additional protocol to the International Covenant on Civil and Political Rights on the right to a fair trial. Although articles 2 (3), 9 (2) and 9 (3) of the Covenant already contained the substance of the habeas corpus procedure without using the term, there was still a need for a protocol to the Covenant making the recourse non-derogable.

75. The subject of the independence of the judiciary was closely linked with the questions of impunity for human rights offenders and compensation for the victims. The phenomenon of impunity must be considered in the context of systematic violations that became institutionalized in a country's executive, legislative and judiciary branches, security services, police and prison system. Impunity suggested the political and moral condoning of the actions of State officials. The violation of human rights was presented as a service

to the nation, and the fight against impunity therefore required a moral and political rejection of the offender based on the cultural values that were the foundation of any civilized society.

76. Compensation for the victims meant, in particular, rehabilitation of their reputation. In that context, his delegation congratulated the Special Rapporteur on his outstanding study concerning the right to restitution, compensation and rehabilitation for victims of gross violations of human rights and fundamental freedoms (E/CN.4/Sub.2/1993/8). In that connection, the Special Rapporteur had made some interesting references to the compensation policies pursued by Chile since its return to democracy and its efforts to establish the truth. An amnesty law, in force since 1978, had unfortunately prevented justice from being done for crimes committed prior to that date. A number of compensation mechanisms had been created that were in the spirit of the "basic principles and guidelines" suggested by the Special Rapporteur, such as lifelong pensions, special health care, free schooling, exemption from military service and legal assistance for lawsuits.

77. Mrs. PEREZ (Brazil) said that the community of Portuguese-speaking countries had repeatedly stressed the importance it attached to the non-discriminatory and effective administration of justice as one of the pillars of democracy. At the Third Summit of Ministers of Justice of the Portugese-speaking Countries, held at Brasilia in October 1993 on the subject of "Justice and Citizenship", the following goals had been reaffirmed: full realization of the right of all citizens to the proper administration of justice, including information on citizens' rights; possibilities of obtaining legal remedies and free legal counselling and defence for persons lacking in financial means; giving a constitutional grounding to the right of citizens to receive all necessary information and counselling on the due process of law and the administration of justice; and democratization of the administration of justice through the creation or strengthening of official institutions to inform citizens about their right to the administration of justice.

78. Her delegation welcomed the Sub-Commission's decision to entrust Mr. Joinet and Mr. Guissé with an in-depth study on impunity and to include questions of impunity with respect not only to civil and political rights, but also to economic, social and cultural rights. The impunity of State officials guilty of corruption and the internal and international responsibilities involved were directly linked to the realization of the right to development.

79. Brazil was the first country ever to impeach a president on charges of corruption. Members of Congress and politicians accused of that offence were currently under investigation by a commission of inquiry created by the Congress. A number of Congressmen found guilty were likely to lose their mandates.

80. President Itamar Franco, who was personally committed to ensuring that human rights violators received their just punishment, was closely following the cases involving the killing of street children at Candelaria in Rio de Janeiro, the murder of Ianomami indians in Haximu and the crimes perpetrated by a death squad in Vigario Geral, Rio de Janeiro. One hundred and thirty-one persons were currently being held in custody in Rio de Janeiro on charges of gross human rights violations, 69 of them being military

policemen and 4 civil policemen. All the military policemen involved in such crimes were prosecuted by both the military and and the civilian courts. In the state of Sao Paulo, a police officer found guilty of the killing of 18 detainees in the prison of Parque Sao Lucas had been sentenced to 516 years' imprisonment, the most severe sentence ever handed down in Brazil.

81. There could be no excuse for the practice of torture, not even terrorism or civil strife. Brazil had learned by experience that laxity on that question eroded the moral authority of the State, created serious disciplinary problems within the police and security forces, threatened the independence of the judiciary and alienated support for the Government. Her delegation had sponsored Commission on Human Rights resolution 1993/34 on the drafting of an optional protocol to the Convention against Torture, because it favoured all constructive initiatives aimed at the eradication of that evil. It would continue to cooperate with the Working Group on the draft optional protocol to clarify the remaining issues.

82. Mr. PEREZ del SOLAR (Peru) said that the findings contained in the report of the Working Group on Enforced or Involuntary Disappearances (E/CN.4/1994/26), highlighted his Government's determination to combat racism while respecting human rights and to cooperate closely with the relevant international and regional monitoring bodies. The Working Group had registered a substantial and constant decline in reported cases of disappearance in 1993 (para. 362); of the 98 cases clarified, 97 had been based on information provided by his Government and only one on the basis of information furnished by a source (para. 363).

83. As the latter statistics demonstrated, his Government was cooperating closely with the Working Group, whereas those who made allegations quickly washed their hands of the affair once the initial communication had been submitted. NGOs often knew more about the reappearance of many persons than did the authorities did, but they did not always make available to the United Nations information that might clarify cases, alleviate the congestion in the work of the competent national bodies and prevent inflated statistics that were prejudicial to a country's image.

84. The Working Group on Arbitrary Detention had adopted two decisions on Peru in 1993. His delegation was pleased to inform the Commission that Miguel Fernando Ruiz-Conejo Márquez and Enriqueta Laguna Franca had been released. Of the 35 reported cases referred to in paragraph 8 of the report of the Working Group (E/CN.4/1994/27), only nine were still pending. The others did not involve cases of arbitrary detention or the persons concerned had been released.

85. In respect of the report of the Special Rapporteur on torture (E/CN.4/1994/31), he said that a clarification was necessary. Of the cases listed in the report for 1993, only six were alleged to have occurred in that year, whereas the others dated from 1992, 1991 and 1990. While aware of its obligation to investigate and, if necessary, punish those responsible for human rights violations committed in previous years, his Government considered that the inclusion in 1993 of cases that had occurred earlier could lead to

confusion. Of the six current cases, five had been for alleged torture and one for threats of torture. The Special Rapporteur had been informed that Juan Mallea Tomailla had made a sworn statement that he had not been the victim of ill-treatment on the part of the police authorities.

86. His Government gave priority to the eradication of torture. A high-level multisectoral group, established to report on the implementation of the Convention against Torture, had focused on the legal aspects so as to include all the cases submitted by the Special Rapporteur. Although such cases were few in number, his authorities were making a great effort to investigate them all.

87. His Government noted that operative paragraph 2 of Commission resolution 1993/48 was not being implemented by all the working groups and special rapporteurs of the Commission. The Working Group on Enforced or Involuntary Disappearances was the only body that had taken up adequately the numerous communications forwarded by his Government to the Centre for Human Rights in implementation of that paragraph. Given the international publicity of the Commission's documents, human rights violations committed by terrorist groups as well as concrete progress made by Governments in the area concerned should also receive coverage. That was simply a question of promoting objectivity and rejecting discrimination and selectivity.

88. For example, the efforts made by the National Election Panel and the Ministry of Foreign Affairs of Peru did not appear in any of the above-mentioned reports. The National Election Panel had carried out a computer check to see whether any of the persons reported as having disappeared could be identified as having participated in recently held elections. On the basis of signatures and fingerprints, 42 persons reported to have disappeared had been found to have voted in the general elections of November 1992. That information had been forwarded to the Centre for Human Rights in April 1993.

89. According to a number of NGOs, the situation in Peru continued to be the most serious and complex in the Andean region. His delegation pointed out that the bloodthirsty terrorist group active in Peru had been working to destroy Peruvian society for the past 13 years. Concern had been expressed that the Working Group on Enforced or Involuntary Disappearances had registered only 10 cases in Peru in 1993, compared to the 30 noted by NGOs. His Government thought that that fact indicated a decline of approximately 90 per cent over the previous year in reported violations of that type.

90. It had been stated by an NGO that anti-terrorist legislation allowed incommunicado detention for up to 30 days. In actual fact, article 2, paragraph (a), of Decree-Law No. 25744 provided that pre-trial detention could last for no more than 15 days in cases where the charge was treason and could be extended for another 15 days, once only, if a request for extension was warranted. Decree-Law No. 25475 on the offence of terrorism likewise provided for pre-trial detention of no more than 15 days.

91. A number of NGOs had pointed out that some 3,500 persons had been detained in police operations in 1993. Unfortunately, they had failed to mention the circumstances of those operations and such details as the number

of persons held in detention and the number released the same day, the number of terrorists, drug traffickers and common criminals captured in those operations and the fact that many of the persons detained for a short time had been held because they were not carrying identity papers. Such operations, immediately after a terrorist attack, had led to the capture of large numbers of terrorists, thus preventing further assaults.

92. None of the NGOs had referred to a number of important amendments to anti-terrorist legislation which had abolished the prohibition of habeas corpus and amparo actions in trials concerning the offence of terrorism and treason; guaranteed full right to appeal from decisions of the military courts; abolished convictions in absentia, and repealed the legislation prohibiting lawyers from arguing more than one case involving terrorism.

93. His Government, which had publicly acknowledged that excesses had been committed in the fight against terrorism, would continue to cooperate with regional and international human rights bodies to achieve peace and the strict respect for human rights.

94. Mr. VALENZUELA MARZO (Observer for Spain) said that Spain's legislation on the prevention of torture was among the world's most liberal. Spain had signed the Convention against Torture and recognized the competence of the Committee against Torture to receive and study individual communications. It had acceded to the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment and supported the work of the Special Rapporteur on torture, with whom it cooperated regularly. His Government was well aware of the need to pay particular attention to the risks of acts of torture committed by State security forces and military or paramilitary units, torture in prisons and detention centres and the use of psychiatric treatment as a means of torture.

95. In the view of his delegation, it was important to focus on the role of education, with particular reference to the professional training of the members of security forces and those involved in the administration of justice, so as to inculcate absolute respect for the human rights of all; to ensure full awareness and implementation of the national and international instruments; to adopt legal and administrative provisions to punish those responsible for acts of torture; to provide full physical, psychological and social rehabilitation and economic compensation for the victims of torture; and to ensure judicial supervision of the actions of the executive power through appropriate appeal mechanisms.

The meeting rose at 12.55 p.m.